



U. S. Department of Commerce
Annual Report on the No FEAR Act

2007

The Department of Commerce is pleased to submit this annual report in accordance with Section 5, Part 724 of the Code of Federal Regulations (5 C.F.R. § 724), Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act. The report is divided into seven sections that track the reporting areas required by the regulations: pending and resolved federal court cases; administrative equal employment opportunity complaints; disciplinary actions resulting from violations of nondiscrimination and whistleblower protection statutes; agency disciplinary policies; trend analyses of court cases and administrative complaints; a budgetary impact analysis; and the agency training plan.

In accordance with 5 C.F.R. § 724.302 (b), this report also provides information for the data elements in paragraph (a) of 5 C.F.R. 724 for each of the five fiscal years preceding the fiscal year on which the first report is based, to the extent that such data is available.

This report does not include data or responses from the U.S. Patent and Trademark Office (USPTO). The USPTO is submitting its own report under separate cover.

Part 1. The Number of Federal Court Cases Pending and Resolved

Section 5, Parts 724.302(a)(1) through (3) of the Code of Federal Regulations require agencies to report:

(1) The number of cases in Federal court pending or resolved in each fiscal year and arising under each of the respective provisions of the Federal Antidiscrimination Laws and Whistleblower Protection Laws applicable to them as defined in Sec. 724.102 of subpart A of this part in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) of law involved;

(2) In the aggregate, for the cases identified in paragraph (a)(1) of this section and separated by provision(s) of law involved:

(i) The status or disposition (including settlement);

(ii) The amount of money required to be reimbursed to the Judgment Fund by the agency for payments as defined in Sec. 724.102 of subpart A of this part;

(iii) The amount of reimbursement to the Fund for attorney's fees where such fees have been separately designated;

(3) In connection with cases identified in paragraph (a)(1) of this section, the total number of employees in each fiscal year disciplined as defined in Sec. 724.102 of subpart A of this part and the specific nature, e.g., reprimand, etc., of the disciplinary actions taken, separated by the provision(s) of law involved.

Response: The statutes applicable to this report are:

Section 2302(b)(1) of the Civil Service Reform Act, which prohibits discrimination in personnel actions based on: race, color, religion, sex, or national origin (as prohibited by Title VII of the Civil Rights Act of 1964); age (as prohibited by sections 12 and 15 of the Age Discrimination in Employment Act of 1967); sex (as prohibited by section 6(d) of the Fair Labor Standards Act of 1938); handicapping condition (as prohibited by section 501 of the Rehabilitation Act of 1973); and marital status or political affiliation.

Section 2302(b)(9) of the Civil Service Reform Act, which prohibits taking a personnel action based on an employee's: exercise of any appeal, complaint, or grievance right; testimony or other lawful assistance in the exercise of any appeal, complaint, or grievance right; cooperation with or disclosure to the agency's Inspector General or the Office of Special Counsel; or refusal to obey an illegal order.

Section 6(d)(1) of the Fair Labor Standards Act of 1938, also known as the Equal Pay Act, which prohibits discrimination "between employees on the basis of sex by paying wages to employees ... at a rate less than the rate [paid] to employees of the opposite sex ... for equal work on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions..." 29 U.S.C. 206(d)(1)

The Age Discrimination in Employment Act (ADEA) of 1967, as amended, which states that, "All personnel actions affecting employees or applicants for employment who are at least 40 years of age ... in executive agencies ... shall be made free from any discrimination based on age." 29 U.S.C. § 633a(a).

Section 501 of the Rehabilitation Act of 1973, 29 U.S.C. § 791 et seq., which prohibits discrimination on the basis of disability and requires agencies of the Federal government to make reasonable accommodation to the known physical or mental limitations of qualified employees with disabilities, unless the agency can demonstrate that accommodation would prove to be an "undue hardship."

Section 717 of the Civil Rights Act of 1964 (Title VII), which prohibits discrimination based on race, color, religion, sex, or national origin against federal employees in executive agencies. 42 U.S.C. §2000e-16(a). Under Title VII, it is also unlawful "for an employer to discriminate against any of its employees because [the employee] has opposed any practice made an unlawful employment practice by Title VII, or because [the employee] has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII.

Tables showing the number and disposition of civil actions filed in a United States District Court under any of these statutes appear below:

Table 1.A: Federal Court Litigation, FY 2001

FY 2001							
Statute	Number of Cases	Final Judgments Against Agency		Settled	Employees Disciplined		
Civil Service Reform Act, 5 U.S.C. 2302(b)(1)	Pending	0	0	0			0
Prohibited Personnel Practice	Resolved	0					
Civil Service Reform Act, 5 U.S.C. 2302(b)(9)	Pending	0	0	0			0
Whistleblowing	Resolved	0					
Fair Labor Standards Act	Pending	0	0	0			0
29 U.S.C. 206(d)	Resolved	0					
Age Discrimination in Employment Act of 1967	Pending	1	0	0			0
29 U.S.C. 631 and 633a	Resolved	2					
Rehabilitation Act of 1973	Pending	0	0	0			0
29 U.S.C. 791	Resolved	1					
Civil Rights Act of 1964 (Title VII)	Pending	18	0	5			0
42 U.S.C. 2000e-16	Resolved	9					
Title VII and ADEA	Pending	4	0	0			0
	Resolved	2					
Title VII, ADEA and Rehabilitation Act	Pending	2	0	0			0
	Resolved	0					
Title VII and Rehabilitation Act	Pending	1	0	0			0
	Resolved	0					
ADEA and Rehabilitation Act	Pending	0	0	0			0
	Resolved	0					
Title VII and CSRA (Whistleblowing)	Pending	0	0	0			0
	Resolved	0					
Total	Pending	26	0	5			0
	Resolved	14					

Judgment Fund Expenditures, FY 2001			
Judgment Fund Total	Judgments	Settlements	Attorney's Fees
\$155,214.30	\$0.00	\$122,214.30	\$33,000.00

Table 1.B: Federal Court Litigation, FY 2002

FY 2002							
Statute	Number of Cases	Final Judgments Against Agency	Settled	Employees Disciplined			
Civil Service Reform Act, 5 U.S.C. 2302(b)(1)	Pending	0	0	0			0
Prohibited Personnel Practice	Resolved	0					
Civil Service Reform Act, 5 U.S.C. 2302(b)(9)	Pending	1	0	0			0
Whistleblowing	Resolved	0					
Fair Labor Standards Act	Pending	0	0	0			0
29 U.S.C. 206(d)	Resolved	0					
Age Discrimination in Employment Act of 1967	Pending	2	0	0			0
29 U.S.C. 631 and 633a	Resolved	0					
Rehabilitation Act of 1973	Pending	1	0	0			0
29 U.S.C. 791	Resolved	0					
Civil Rights Act of 1964 (Title VII)	Pending	17	0	2			0
42 U.S.C. 2000e-16	Resolved	11					
Title VII and ADEA	Pending	7	0	0			0
	Resolved	2					
Title VII, ADEA and Rehabilitation Act	Pending	2	0	0			0
	Resolved	0					
Title VII and Rehabilitation Act	Pending	0	0	0			0
	Resolved	1					
ADEA and Rehabilitation Act	Pending	0	0	0			0
	Resolved	0					
Title VII and CSRA (Whistleblowing)	Pending	2	0	0			0
	Resolved	0					
Total	Pending	32	0	2			0
	Resolved	14					

Judgment Fund Expenditures, FY 2002			
Judgment Fund Total	Judgments	Settlements	Attorney's Fees
\$19,000.00	\$0.00	\$10,000.00	\$9,000.00

Table 1.C: Federal Court Litigation, FY 2003

FY 2003							
Statute	Number of Cases		Final Judgments Against Agency		Settled	Employees Disciplined	
Civil Service Reform Act, 5 U.S.C. 2302(b)(1)	Pending	0		0			0
Prohibited Personnel Practice	Resolved	0					
Civil Service Reform Act, 5 U.S.C. 2302(b)(9)	Pending	0		0			0
Whistleblowing	Resolved	1					
Fair Labor Standards Act	Pending	0		0			0
29 U.S.C. 206(d)	Resolved	0					
Age Discrimination in Employment Act of 1967	Pending	3		0			0
29 U.S.C. 631 and 633a	Resolved	0					
Rehabilitation Act of 1973	Pending	0		0	1		0
29 U.S.C. 791	Resolved	1					
Civil Rights Act of 1964 (Title VII)	Pending	18		0	1		0
42 U.S.C. 2000e-16	Resolved	4					
Title VII and ADEA	Pending	9		0	2		0
	Resolved	3					
Title VII, ADEA and Rehabilitation Act	Pending	7		0	0		0
	Resolved	1					
Title VII and Rehabilitation Act	Pending	1		0	0		0
	Resolved	0					
ADEA and Rehabilitation Act	Pending	0		0	0		0
	Resolved	0					
Title VII and CSRA (Whistleblowing)	Pending	1		0	0		0
	Resolved	1					
Total	Pending	39		0	4		0
	Resolved	11					

Judgment Fund Expenditures, FY 2003			
Judgment Fund Total	Judgments	Settlements	Attorney's Fees
\$116,000.00	\$0.00	\$84,000.00	\$32,000.00

Table 1.D: Federal Court Litigation, FY 2004

FY 2004							
Statute	Number of Cases		Final Judgments Against Agency		Settled	Employees Disciplined	
Civil Service Reform Act, 5 U.S.C. 2302(b)(1)	Pending	0		0			0
Prohibited Personnel Practice	Resolved	0					
Civil Service Reform Act, 5 U.S.C. 2302(b)(9)	Pending	0		0			0
Whistleblowing	Resolved	0					
Fair Labor Standards Act	Pending	0		0			0
29 U.S.C. 206(d)	Resolved	0					
Age Discrimination in Employment Act of 1967	Pending	3		0			0
29 U.S.C. 631 and 633a	Resolved	1					
Rehabilitation Act of 1973	Pending	1		0			0
29 U.S.C. 791	Resolved	0					
Civil Rights Act of 1964 (Title VII)	Pending	20		0			0
42 U.S.C. 2000e-16	Resolved	5					
Title VII and ADEA	Pending	5		0			0
	Resolved	5					
Title VII, ADEA and Rehabilitation Act	Pending	6		0			0
	Resolved	2					
Title VII and Rehabilitation Act	Pending	6		0			0
	Resolved	0					
ADEA and Rehabilitation Act	Pending	0		0			0
	Resolved	0					
Title VII and CSRA (Whistleblowing)	Pending	0	0	0			
	Resolved	1					
Total	Pending	41	0	0			
	Resolved	14					

Judgment Fund Expenditures, FY 2004			
Judgment Fund Total	Judgments	Settlements	Attorney's Fees
\$0.00	\$0.00	\$0.00	\$0.00

Table 1.E: Federal Court Litigation, FY 2005

FY 2005			Final Judgments Against Agency		Settled	Employees Disciplined	
Statute	Number of Cases						
Civil Service Reform Act, 5 U.S.C. 2302(b)(1)	Pending	0		0	0		0
Prohibited Personnel Practice	Resolved	0					
Civil Service Reform Act, 5 U.S.C. 2302(b)(9)	Pending	1		0	0		0
Whistleblowing	Resolved	1					
Fair Labor Standards Act	Pending	0		0	0		0
29 U.S.C. 206(d)	Resolved	0					
Age Discrimination in Employment Act of 1967	Pending	3		0	1		0
29 U.S.C. 631 and 633a	Resolved	1					
Rehabilitation Act of 1973	Pending	1		0	0		0
29 U.S.C. 791	Resolved	1					
Civil Rights Act of 1964 (Title VII)	Pending	16		0	3		0
42 U.S.C. 2000e-16	Resolved	10					
Title VII and ADEA	Pending	2		0	0		0
	Resolved	4					
Title VII, ADEA and Rehabilitation Act	Pending	5		0	0		0
	Resolved	1					
Title VII and Rehabilitation Act	Pending	3		0	0		0
	Resolved	1					
ADEA and Rehabilitation Act	Pending	3		0	0		0
	Resolved	0					
Title VII and CSRA (Whistleblowing)	Pending	0		0	0		0
	Resolved	0					
Total	Pending	34		0	4		0
	Resolved	19					

Judgment Fund Expenditures, FY 2005			
Judgment Fund Total	Judgments	Settlements	Attorney's Fees
\$144,482.32	\$0.00	\$104,482.32	\$40,000.00

Table 1.F: Federal Court Litigation, FY 2006

FY 2006							
Statute	Number of Cases		Final Judgments Against Agency		Settled	Employees Disciplined	
Civil Service Reform Act, 5 U.S.C. 2302(b)(1)	Pending	0		0	0		0
Prohibited Personnel Practice	Resolved	0					
Civil Service Reform Act, 5 U.S.C. 2302(b)(9)	Pending	0		0	0		
Whistleblowing	Resolved	1					
Fair Labor Standards Act	Pending	0		0	0		
29 U.S.C. 206(d)	Resolved	0					
Age Discrimination in Employment Act of 1967	Pending	2		0	0		
29 U.S.C. 631 and 633a	Resolved	1					
Rehabilitation Act of 1973	Pending	1		0	1		
29 U.S.C. 791	Resolved	2					
Civil Rights Act of 1964 (Title VII)	Pending	20		0	2		
42 U.S.C. 2000e-16	Resolved	4					
Title VII and ADEA	Pending	2		0	0		
	Resolved	0					
Title VII, ADEA and Rehabilitation Act	Pending	5		0	0		
	Resolved	1					
Title VII and Rehabilitation Act	Pending	3		0	0		
	Resolved	3					
ADEA and Rehabilitation Act	Pending	1		0	0		
	Resolved	0					
Title VII and CSRA (Whistleblowing)	Pending	0	0	0			
	Resolved	0					
Total	Pending	34	0	3			
	Resolved	11					

Judgment Fund Expenditures, FY 2006			
Judgment Fund Total	Judgments	Settlements	Attorney's Fees
\$387,000.00	\$0.00	\$387,000.00	\$0.00

Part 2. Administrative Equal Employment Opportunity Complaint Data

Section 5, Part 724.302(a)(4) of the Code of Federal Regulations requires agencies to report:

The final year-end data about discrimination complaints for each fiscal year that was posted in accordance with Equal Employment Opportunity Regulations at subpart G of title 29 of the Code of Federal Regulations (implementing section 301(c)(1)(B) of the No FEAR Act).

Response: See the following tables.

**Administrative EEO Complaint Data Posted Pursuant to 29 C.F.R. 1614.704
U.S. Department of Commerce Aggregate Data, FY 2001-2006**

Complaint Activity	Comparative Data					2006 Thru 9/30
	Previous Fiscal Year Data					
	2001	2002	2003	2004	2005	
Number of Complaints Filed	237	213	138	110	130	123
Number of Complainants	226	198	134	108	125	120
Repeat Filers	10	12	4	2	4	4

Complaints by Basis	Comparative Data					2006 Thru 9/30
	Previous Fiscal Year Data					
	2001	2002	2003	2004	2005	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints filed .</i>						
Race	144	117	82	42	53	49
Color	9	17	16	10	12	19
Religion	23	8	12	6	16	6
Reprisal	111	90	71	68	63	58
Sex	75	59	57	38	50	33
National Origin	35	17	35	25	16	11
Equal Pay Act	0	0	0	1	1	0
Age	83	66	66	47	59	44
Disability	40	38	37	33	44	38
Non-EEO	2	4	1	2	1	1

Complaints by Issue	Comparative Data					2006 Thru 9/30
	Previous Fiscal Year Data					
<i>Note: Complaints can be filed alleging multiple issues. The sum of the issues may not equal total complaints filed .</i>	2001	2002	2003	2004	2005	
Appointment/Hire	32	8	7	4	9	2
Assignment of Duties	26	23	19	21	37	28
Awards	10	7	7	12	8	11
Conversion to Full-time	1	0	0	0	0	0
Disciplinary Action						
Demotion	4	1	9	2	4	2
Reprimand	14	7	4	6	2	7
Removal	0	1	0	0	3	0
Suspension	7	0	0	7	6	6
Other	0	1	0	2	1	0
Duty Hours	0	1	0	3	0	0
Evaluation Appraisal	15	15	15	14	15	22
Examination/Test	0	0	0	0	0	0
Harassment						
Non-Sexual	51	52	63	32	56	43
Sexual	8	6	5	4	3	4
Medical Examination	0	0	0	0	0	1
Pay (Including Overtime)	0	0	5	6	1	0
Promotion/Non-Selection	45	60	53	32	27	26
Reassignment						
Denied	0	0	1	1	2	2
Directed	0	3	9	4	9	9
Reasonable Accommodation	14	12	13	11	17	18
Reinstatement	0	0	0	0	0	0
Retirement	0	3	1	2	0	0
Termination	36	14	16	11	20	23
Terms/Conditions of Employment	44	10	7	6	32	16
Time and Attendance	25	3	16	9	17	18
Training	10	10	4	13	11	12
Other	13	7	7	7	11	3

Processing Time	Comparative Data					2006 Thru 9/30
	Previous Fiscal Year Data					
	2001	2002	2003	2004	2005	
Complaints pending during fiscal year						
Average number of days in investigation stage	82	99	78	128	174	129
Average number of days in final action stage	n/a	n/a	n/a	n/a	n/a	254
Complaint pending during fiscal year where hearing was requested						
Average number of days in investigation stage	81	95	74	127	155	141
Average number of days in final action stage	n/a	n/a	n/a	n/a	n/a	13
Complaint pending during fiscal year where hearing was not requested						
Average number of days in investigation stage	78	92	75	129	205	125
Average number of days in final action stage	n/a	n/a	n/a	n/a	n/a	313

Complaints Dismissed by Agency	Comparative Data					2006 Thru 9/30
	Previous Fiscal Year Data					
	2001	2002	2003	2004	2005	
Total Complaints Dismissed by Agency	527	31	31	33	29	25
Average days pending prior to dismissal	218	113	194	121	139	129
Complaints Withdrawn by Complainants						
Total Complaints Withdrawn by Complainants	43	12	16	9	9	13

Total Final Actions Finding Discrimination	Comparative Data										2006 Thru 9/30	
	Previous Fiscal Year Data											
	2001		2002		2003		2004		2005		#	%
	#	%	#	%	#	%	#	%	#	%		
Total Number Findings	4	100	1	100	3	100	2	100	0	0	1	100
Without Hearing	3	75	0	0	3	100	1	50	0	0	0	0
With Hearing	1	25	1	100	0	0	1	50	0	0	1	100

Findings of Discrimination Rendered by Basis	Comparative Data											
	Previous Fiscal Year Data										2006 Thru 9/30	
	2001		2002		2003		2004		2005			
#	%	#	%	#	%	#	%	#	%	#	%	
<i>Note: Complaints can be filed alleging multiple bases. The sum of the bases may not equal total complaints and findings.</i>												
Total Number Findings	4	100	1	100	3	100	2	100	0	0	1	100
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	1	100	1	33	0	0	0	0	0	0
Reprisal	3	75	0	0	0	0	1	33	0	0	1	25
Sex	0	0	0	0	0	0	2	67	0	0	1	25
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	1	25	0	0	0	0	0	0	0	0	1	25
Disability	0	0	0	0	2	67	0	0	0	0	1	25
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings After Hearing	1	25	1	100	0	0	1	50	0	0	1	100
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	0	0	0	0	0	0	0	0
Religion	0	0	1	100	0	0	0	0	0	0	0	0
Reprisal	0	0	0	0	0	0	1	33	0	0	1	25
Sex	0	0	0	0	0	0	1	33	0	0	1	25
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	1	25	0	0	0	0	0	0	0	0	1	25
Disability	0	0	0	0	0	0	0	0	0	0	1	25
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	3	75	0	0	3	100	1	50	0	0	0	0
Race	0	0	0	0	0	0	0	0	0	0	0	0
Color	0	0	0	0	1	33	0	0	0	0	0	0
Religion	0	0	0	0	0	0	0	0	0	0	0	0
Reprisal	3	75	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	1	33	0	0	0	0
National Origin	0	0	0	0	0	0	0	0	0	0	0	0
Equal Pay Act	0	0	0	0	0	0	0	0	0	0	0	0
Age	0	0	0	0	0	0	0	0	0	0	0	0
Disability	0	0	0	0	2	67	0	0	0	0	0	0
Non-EEO	0	0	0	0	0	0	0	0	0	0	0	0

Findings of Discrimination Rendered by Issue	Comparative Data										2006 Thru 9/30	
	Previous Fiscal Year Data											
	2001		2002		2003		2004		2005		#	%
	#	%	#	%	#	%	#	%	#	%		
Total Number Findings	4	100	1	100	3	100	2	100	0	0	1	100
Appointment/Hire	1	25	1	100	0	0	0	0	0	0	0	0
Assignment of Duties	1	25	0	0	0	0	0	0	0	0	0	0
Awards	1	25	0	0	0	0	0	0	0	0	1	33
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action	0	0	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Duty Hours	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	0	0
Harassment	0	0	0	0	0	0	0	0	0	0	0	0
Non-Sexual	0	0	0	0	1	33	1	25	0	0	1	33
Sexual	0	0	0	0	0	0	1	25	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	1	25	0	0	1	34
Reassignment	0	0	0	0	0	0	0	0	0	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	1	25	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	2	67	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	1	25	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Findings After Hearing	1	25	1	100	0	0	1	50	0	0	1	100
Appointment/Hire	1	25	1	100	0	0	0	0	0	0	0	0
Assignment of Duties	0	0	0	0	0	0	0	0	0	0	0	0
Awards	0	0	0	0	0	0	0	0	0	0	1	33
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action	0	0	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0
Suspension	0	0	0	0	0	0	0	0	0	0	0	0
Removal	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Evaluation Appraisal	0	0	0	0	0	0	0	0	0	0	0	0
Examination/Test	0	0	0	0	0	0	0	0	0	0	1	33
Harassment	0	0	0	0	0	0	0	0	0	0	0	0
Non-Sexual	0	0	0	0	0	0	1	25	0	0	0	0
Sexual	0	0	0	0	0	0	1	25	0	0	0	0
Medical Examination	0	0	0	0	0	0	0	0	0	0	0	0
Pay (Including Overtime)	0	0	0	0	0	0	0	0	0	0	0	0
Promotion/Non-Selection	0	0	0	0	0	0	0	0	0	0	1	34
Reassignment	0	0	0	0	0	0	0	0	0	0	0	0
Denied	0	0	0	0	0	0	0	0	0	0	0	0
Directed	0	0	0	0	0	0	0	0	0	0	0	0
Reasonable Accommodation	0	0	0	0	0	0	0	0	0	0	0	0
Reinstatement	0	0	0	0	0	0	0	0	0	0	0	0
Retirement	0	0	0	0	0	0	0	0	0	0	0	0
Termination	0	0	0	0	0	0	0	0	0	0	0	0
Terms/Conditions of Employment	0	0	0	0	0	0	0	0	0	0	0	0
Time and Attendance	0	0	0	0	0	0	1	25	0	0	0	0
Training	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
Findings Without Hearing	3	75	0	0	3	100	1	50	0	0	0	0
Appointment/Hire	0	0	0	0	0	0	0	0	0	0	0	0
Assignment of Duties	1	25	0	0	0	0	0	0	0	0	0	0
Awards	1	25	0	0	0	0	0	0	0	0	0	0
Conversion to Full-time	0	0	0	0	0	0	0	0	0	0	0	0
Disciplinary Action	0	0	0	0	0	0	0	0	0	0	0	0
Demotion	0	0	0	0	0	0	0	0	0	0	0	0
Reprimand	0	0	0	0	0	0	0	0	0	0	0	0

Pending Complaints Filed in Previous Fiscal Years by Status	Comparative Data					2006 Thru 9/30
	Previous Fiscal Year Data					
	2001	2002	2003	2004	2005	
Total complaints from previous Fiscal Years	n/a	n/a	n/a	n/a	n/a	171
Total Complainants	n/a	n/a	n/a	n/a	n/a	148
Number complaints pending						
Investigation	n/a	n/a	n/a	n/a	n/a	2
Hearing	n/a	n/a	n/a	n/a	n/a	42
Final Action	n/a	n/a	n/a	n/a	n/a	35
Appeal with EEOC Office of Federal Operations	n/a	n/a	n/a	n/a	n/a	36

Complaint Investigations	Comparative Data					2006 Thru 9/30
	Previous Fiscal Year Data					
	2001	2002	2003	2004	2005	
Pending Complaints Where Investigation Exceeds Required Time Frames	417	252	133	92	141	68

Part 3. Disciplinary Actions

Section 5, Part 724.302(a)(5) of the Code of Federal Regulations requires agencies to report:

Whether or not in connection with cases in Federal court, the number of employees in each fiscal year disciplined as defined in Sec. 724.102 of subpart A of this part in accordance with any agency policy described in paragraph (a)(6) of this section. The specific nature, e.g., reprimand, etc., of the disciplinary actions taken must be identified.

Response: Consistent with the fact that there were no final judgments of discrimination against the Department between Fiscal Years 2001 and 2006, no employees were disciplined in connection with cases in Federal court. One employee was disciplined in accordance with an agency policy as described in paragraph (a)(6) during the reporting period because that employee was found to have engaged in sexual harassment in violation of Department Administrative Order 202-955, described in Part 4. The employee was demoted, then reassigned from a supervisory position to a non-supervisory position.

No employees were disciplined in response to the eleven findings of discrimination described in Section 5.b (Administrative EEO complaints) because the offending employees were no longer on the rolls at the time the findings were made. In three cases, the supervisors found to be responsible were temporary employees and no longer employed by the Department at the time the finding of discrimination was made. In four cases (three of which were filed by one complainant and consolidated), the responsible officials were political appointees who had resigned by the time the complaints were decided. In one case, the responsible official retired prior to final action on the complaint. In two cases (filed by one complainant and consolidated),

the unit of the agency where discrimination was found was transferred to the Federal Aviation Administration (FAA) after the finding of discrimination was made, but before any corrective action took place. The legislation authorizing the transfer of function also transferred all pending liabilities. Therefore, the FAA assumed responsibility for all corrective action stemming from those complaints. Corrective action on the remaining complaint is still pending final appellate action by the EEOC.

Part 4. Disciplinary Policies

Section 5, Part 724.302(a)(6) of the Code of Federal Regulations requires agencies to report:

A detailed description of the agency's policy for taking disciplinary action against Federal employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws.

Response: The Department's policy for taking disciplinary action against Federal Employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws is set forth in Department Administrative Order 202-751 (DAO 202-751), a copy of which is appended to this report. The relevant offenses appear at Numbers 36, 42, 45, and 46 on the Table of Offenses and Penalties:

- Harassing, threatening or taking reprisal action against an employee as a result of or in anticipation of a grievance, appeal, complaint, or other exercise of rights (5 days suspension to removal);
- Misrepresentation, falsification, or omission of material fact in connection with application, employment or any record, report, investigation or other proceeding (written reprimand to removal);
- Discrimination. As used in the Table of Offenses and Penalties, discrimination refers to specific acts taken by an employee in the performance of his/her official duties which discriminate against one or more individuals on the basis of race, sex, religion, color, age, national origin, disability, marital status, or political affiliation. (5 day suspension to removal); and
- Refusal to answer appropriate interrogation in a properly authorized inquiry (written reprimand to removal).

Departmental Administrative Order 202-955, a copy of which is appended to this report, also provides an expedited process for reviewing allegations of harassment, terminating actual incidents of harassment, and taking disciplinary actions as appropriate, which includes stopping any ongoing harassment and initiating disciplinary or adverse action when an inquiry results in a finding that misconduct has occurred.

Part 5. Trend Analyses

Section 5, Part 724.302(a)(7) of the Code of Federal Regulations requires agencies to report:

An analysis of the information provided in paragraphs (a)(1) through (6) of this section in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with 29 CFR part 1614 subpart F of the Code of Federal Regulations. Such analysis must include:

- (i) An examination of trends;
- (ii) Causal analysis;
- (iii) Practical knowledge gained through experience; and
- (iv) Any actions planned or taken to improve complaint or civil rights programs of the agency with the goal of eliminating discrimination and retaliation in the workplace;

Part 5.a: Civil Actions Filed in Federal Court

Analysis of Totals:

For the fiscal years 2001 through 2006, the Department of Commerce litigated 117 cases in Federal district and appellate courts. Eighty-three of those cases have been resolved, leaving 34 cases pending at the time of this report.

Of the 83 cases resolved, the Department settled 18 (21.6%). In all 65 cases that were not settled, there was no final judgment of discrimination against the Department. Consequently, there was no case requiring the discipline of any Department employee.

The Department of Commerce paid a total of \$821,696.62 in settlements (averaging \$136,949.44 per year); of that \$114,000 (\$19,000 per year) were for attorneys fees.

Analysis of Trends:

During the reporting period, there were no lawsuits brought against the Department based on a violation of 5 U.S.C. 2302(b)(1) (Civil Service Reform Act) or 29 U.S.C. 206(d) (pay discrimination). The majority of lawsuits against the Department are based on an alleged violation of Title VII of the Civil Rights Act of 1964.

As shown in the table below, there is a decreasing trend in the number of new antidiscrimination and whistleblower protection lawsuits brought against the Department.

Fiscal Year	# of New Suits
2001	26
2002	20
2003	18
2004	16
2005	12
2006	11

Part 5.b: Administrative EEO Complaints

Number of filings:

Between Fiscal Year (FY) 2001 and FY 2006, formal complaint filings have declined each year, for a total decline of 48%. Excluding cases attributable to the 2000 Decennial Census, the decline in formal complaint filings is 21%. The number of repeat filers declined sharply, from a high of 12 in FY02 to a low of 2 in FY04. FY02, FY05 and FY06 each had 4 repeat filers.

Bases of Complaints:

The leading bases for complaints throughout FY06 and the preceding five fiscal years have been, in order of frequency, reprisal for prior complaint activity or opposition to perceived discrimination, race, age, sex, and disability.

Reprisal, as a percentage of all bases alleged, ranged from a low of 19% in FY03 to a high of 25% in FY04 and averaged 22% for the entire period.

Race, as a percentage of all bases alleged, ranged from a low of 15% in FY04 to a high of 28% in FY02, averaging 21% for the entire period. Within this category, Race/Black is the basis most frequently alleged, averaging 66% of all race-based complaints for the period. The number of race-based complaints filed by African Americans has remained steady for the past six fiscal years, so as complaint filings have declined overall, race-based complaints filed by African Americans represent a greater percentage of the caseload. In FY01, 24% of all non-Decennial formal complaint filings were based on Race/Black. In FY05 and FY06, 27% of all formal complaint filings were based on Race/Black.

Age, as a percentage of all bases alleged, remained fairly constant, ranging from a low of 16% in FY 02 to a high of 19% in FY05, and averaging 17% for the entire period.

Sex, as a percentage of all bases alleged, remained fairly constant, ranging from a low of 13% in FY 06 to a high of 16% in FY05, and averaging 14 % for the entire period. During the reporting period, females alleged sex discrimination twice as often as males.

Disability, as a percentage of all bases alleged, ranged from a low of 8% in FY01 to a high of 15% in FY 06, averaging 11% for the entire period. Disability is the only basis to show an unbroken upward trend.

Issues in Complaints:

The leading issues in complaints filed throughout FY06 and the preceding five fiscal years have been, in order of frequency, non-sexual harassment, promotions/non-selections, and assignment of duties. Performance evaluations, terms and conditions of employment, and termination (excluding terminations of temporary Decennial employees) tie for the fourth most prevalent issue, followed by reasonable accommodation.

Non-sexual harassment, as a percentage of all issues alleged, ranged from a low of 14% in FY01 to a high of 24% in FY03, averaging 18% for the entire period.

Promotions and non-selections, as a percentage of all issues alleged, ranged from a low of 9% in FY05 to a high of 25% in FY02, averaging 15% for the entire period.

Performance evaluations, terms and conditions of employment, and terminations each averaged 6% for entire the period. Performance evaluations, as a percentage of all issues alleged, ranged from a low of 4% in FY01 to a high of 9% in FY06. Terms and conditions, as a percentage of all issues alleged, ranged from a low of 3 % in FY03 and FY04 to a high of 12% in FY01. Non-Decennial terminations ranged from a low of 3% in FY01 to a high of 9% in FY06 and show a general upward trend. Decennial terminations were excluded because most were filed by temporary employees whose terminations were due to the close of the Decennial operation.

Reasonable accommodation, as a percentage of all issues alleged, ranged from a low of 4% in FY01 to a high of 7% in FY06, averaging 5% for the entire period. Reasonable accommodation is the only issue to show an unbroken upward trend, which is reflective of the upward trend in complaints based on disability. This category also includes religious accommodation, but that issue has been so raised so infrequently it is statistically insignificant.

Findings of Discrimination

There were 11 findings of discrimination, two of which were in Decennial cases, between FY01 and FY06. They ranged from a low of 0 in FY05 to a high of 4 in FY01. Four findings were made after a hearing before the Equal Employment Opportunity Commission and seven were made without a hearing.

The bases upon which discrimination was found were religion (2); reprisal (6); sex (one male, three females); age (2); and disability (2). The issues upon which discrimination was found were appointment/hire (2); assignment of duties (1); awards (2); non-sexual harassment (3); sexual

harassment (1); promotion/non-selection (2); directed reassignment (1); reasonable accommodation (2); and time and attendance (1). The number of issues and bases total more than the number of findings because complainants may allege multiple bases and issues.

The bureaus affected were the National Telecommunications and Information Administration (3 consolidated cases); the National Oceanic and Atmospheric Administration (1 case in the Northwest Region of the National Marine Fisheries Service and 2 consolidated cases in the headquarters offices of the National Ocean Service); the headquarters offices of the Bureau of Industry and Security (1 case); the Bureau of the Census (1 case each at the National Processing Center in Jeffersonville, Indiana, the 2000 Decennial Local Census Office in Brooklyn, New York, and the 2000 Local Census Office in Shreveport, Louisiana); and the Milwaukee Office of the International Trade Administration. The timing, geographic dispersion, and diverse subject matter of these complaints do not suggest the existence of an endemic problem, but Departmental efforts to inform all supervisors and employees of their rights and responsibilities regarding equal employment opportunity are also directed toward preventing isolated incidents such as these.

Part 6. Budgetary Adjustments

Section 5, Part 724.302(a)(8) requires agencies to report:

For each fiscal year, any adjustment needed or made to the budget of the agency to comply with its Judgment Fund reimbursement obligation(s) incurred under 5 C.F.R. § 724.103.

Response: The Department of Commerce has not made or needed to make adjustments to its budget to comply with its Judgment Fund reimbursement obligation(s) incurred under 5 C.F.R. § 724.103.

Part 7. Training Plan

Section 5, Part 724.302(a)(9) requires agencies to report:

The agency's written plan developed under 5 C.F.R. § 724.203(a) to train its employees.

Response:

The U. S. Department of Commerce's training plan encompasses a variety of training delivery platforms as follows:

- a. We offer on-line training through the Department's Learning Management System (LMS). SkillSoft developed the No FEAR Act training, while GeoLearning provided the e-learning delivery platform. The staffs from the Offices of Civil Rights at the U.S. Departments of Commerce and Housing and Urban Development reviewed and edited the No FEAR Act training prior to its release by SkillSoft. As of January 8, 2007, 19,310, or 44% of DOC employees had completed the course.

- b. We offer PowerPoint and text versions of the No FEAR Act training which provide a Section 508 compliant alternative format for persons with visual disabilities. The printed versions serve as a back up to the LMS and provide training for employees who do not have access to the LMS, such as some Census field staff. As of January 8, 2007, 9,184 or 20% of employees had completed the No FEAR Act training through these alternative versions.

- c. We developed an in-house version of the No FEAR Act training to train new employees during new employee orientation sessions. These documents are also housed permanently on the Office of Civil Rights website at <http://www.osec.doc.gov/ocr/nofear/NewEmployeeTraining-NoFear.html>. This training is available to all employees at any time as initial training or as a refresher or reference.